IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2858 OF 2004

Shri. Suryakant Dhondu Shinde ... Petitioner

Vs.

Board of Trustees of Port
of Bombay and others ... Respondents

Mr. N.M. Ganguli & Ms. Kunda N. Samant for
Petitioner.

Mr. Umesh Shetty i/by Little & Co. for Respondent
Nos. 1, 2 and 3.

CORAM : F.I. REBELLO,J.
DATED : NOVEMBER 03, 2004

P.C.

. Rule. Heard forthwith.

. The Petitioner was first appointed in statutory canteen of Respondent No. 1 on 2.7.1973 and as tally clerk in Docks department of Respondent No. 1 with continuity of service from 2.10.1979. It is the case of the Petitioner that between 29.6.1993 to 30.8.1995 he could not attend his duties on account of his sickness for which he produced medical certificate from MBPT Hospital. So also from 1.9.1995 to 7.7.1997 he could attend the duty on account of his sickness and he taken treatment from MBPT Hospital. On 8.10.1997 he was chargesheeted and enquiry initiated against him on 11.2.1998. Pursuant to that show cause notice was issued on 24.7.1998. On 17.9.1998 he applied for extension of time which was declined and he was

removed from service from 14.10.1998. He preferred an appeal which was rejected. Reference was raised on his behalf by the Union. That reference came to be answered against the petitioner workman by the Award of the Tribunal dated 30.1.2004. The learned Tribunal found that the workman had remained absent on various occasions and in enquiry he admitted his fault. The learned Tribunal also found that the workman did not dispute that time and opportunity had been given to him by adjourning the matter, to produce his defence and he admitted that he was absent. During the period of absence for which he has chargesheeted the tribunal noted that the enquiry report had held that he had remained absent without leave and that he had not sought to explain the same. In these circumstances, it did not interfere with the punishment imposed.

2. From the evidence recorded by the Enquiry Officer, it appears that between the period of 1.9.1995 to 31.12.1995 the petitioner was on unauthorised absence for 54 days. In the year 1996 for 189 days on 13 occasions and in the year 1997 for 55 days on 25 occasions. The enquiry report shows that the contention of the petitioner was that he was under treatment at the Port Trust Hospital. He produced certificate for only 17 days. On behalf of the Petitioner, his learned counsel points out that previous to 1.9.1995 petitioner was working for last 25 years. The

effect of the order of termination would be that the petitioner would be denied even pensionary benefits which otherwise could have been awarded to him if lessor punishment had been awarded. Considering the peculiar facts and circumstances of this case and as the petitioner have put in more than 25 years of service, in my opinion, this will be a fit case for this court to interfere with the impugned order and substitute the punishment of termination, to one of compulsory retirement.

3. Considering the above, the impugned Award of the Industrial Tribunal is set aside. The punishment imposed of removal from service is substituted by compulsory retirement. Needless to say that the petitioner will be entitled to 2/3 pensionary benefits. Rule made absolute accordingly. No order as to costs.

(F.I. REBELLO,J.)